SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 624.

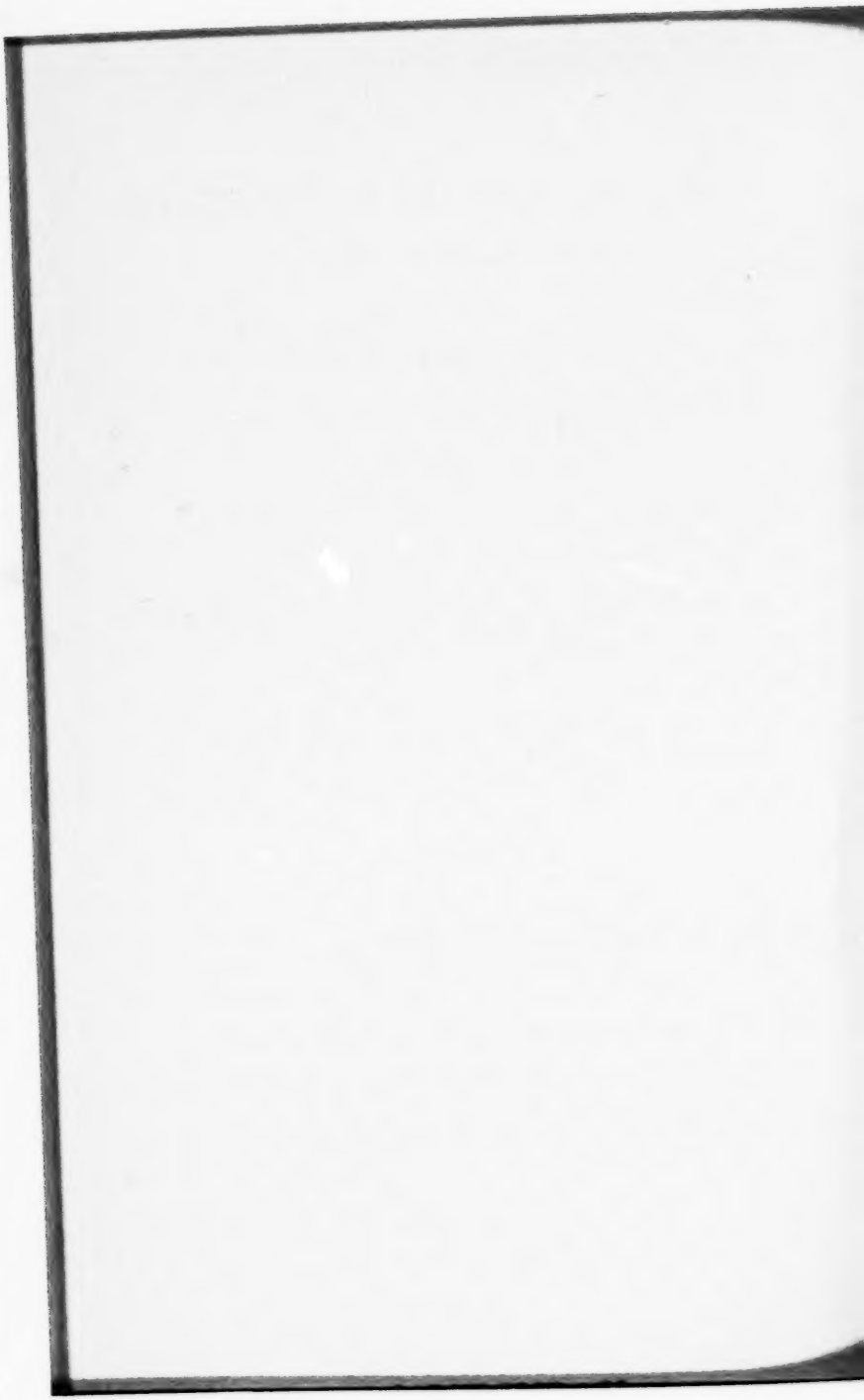
THE UNITED STATES, PETITIONER,

vs.

NORTHERN PACIFIC RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.



a [Original.]

Transcript of record. United States Circuit Court of Appeals, Eighth Circuit. No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America, defendant in error. In error to the District Court of the United States for the District of North Dakota. Filed August 2, 1913.

a1 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1913, of said court, before the Honorable Walter H. Sanborn and the Honorable William C. Hook, circuit judges, and the Honorable William H. Pope, district judge.

Attest:

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the second day of August, A. D. 1913, a transcript of record pursuant to a writ of error directed to the District Court of the United States for the District of North Dakota was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Northern Pacific Railway Company is plaintiff in error and the United States of America is defendant in error, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 In the District Court of the United States for the District of North Dakota, Southeastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT.

Pleas before the honorable Frank A. Youmans, United States district judge for the Western District of Arkansas, presiding in said United States District Court for the District of North Dakota, under assignment.

Be it remembered that on the 14th day of September, A. D. 1912, a complaint was filed in this action, which complaint is in words and figures following, to wit:

Complaint.

In the District Court of the United States for the District of North Dakota, Southeastern Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT.

Now comes the United States of America, by Edward Engerud, United States attorney for the District of North Dakota, and brings this action on behalf of the United States against the Northern Pacific Railway Company, a corporation organized and doing business under the laws of the State of Wisconsin and having an office and place of business at Jamestown, in the State of North Dakota, this action being brought upon suggestion of the Attorney General of the United States at the request of the Interstate Commerce Commission and upon information furnished by said commission.

For a first cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," ap-
2 proved February 4, 1887 (24 Statutes at Large 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered that all carriers subject to the provisions of the act entitled "An act [act] to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act; defendants having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the first day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following in-

stances in which employees of said railroad within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton in said State, were, by defendant, required and per-
3 mitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commision defendant is liable to the plaintiff in the sum of one hundred dollars.

For a second cause of action plaintiff alleges that defendant is and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of North Dakota and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by and act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered that all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath all instances where employees subject to said act have been on duty for a longer period than that provided in

said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the second day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad, within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four hour periods
4 during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and moving from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m., on October 29, 1911, to the hour of 1.15 p. m., on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

For a third cause of action plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36

Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

5 It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon, approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the third day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

6 For a fourth cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to wit:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant, having theretofore failed to make and file with said commission in any form whatsoever a report of all the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the fourth day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667, drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were by defendant required and permitted to
7 be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown in the State of North Dakota to Mapleton, in said State, were, by defendant required and permitted to be and remain on duty as aforesaid, for a longer period than sixteen consecutive hours, to-wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Plaintaiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

For a fifth cause of action plaintiff alleges that defendant is and was during all the times mentioned herein a common carrier engaged in interstate commerce by railroad in the State of North Dakota, and that the railroad of said defendant runs through the district established by law as the judicial district of said court.

Plaintiff further alleges that in violation of a certain order of the Interstate Commerce Commission issued on June 28, 1911, and made in pursuance of the provisions and requirements of section 20 of the act of Congress known as "An act to regulate commerce," approved February 4, 1887 (24 Statutes at Large, 379), as amended by an act approved June 29, 1906 (34 Statutes at Large, 584), as amended by an act approved February 25, 1909 (35 Statutes at Large, 648), and as amended by an act approved June 18, 1910 (36 Statutes at Large, 556), which order of said commission is in the words and figures following, to-wit:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act, defendant having theretofore failed to make and file with said commission in any form whatsoever a report of all
8 the instances wherein its employees subject to said "Act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, were on duty during the month of October, 1911, for a longer period than that provided in said act, did, on the fifth day of December, 1911, continue to be in default with respect thereto, and did fail to make and file with said commission any report of the following instances in which employees of said railroad within the scope of said act, were required or permitted to be and remain on duty as such employees for said railroad in certain twenty-four-hour periods during said month of October, 1911, for a longer period of service than that provided in said act, to-wit:

First. That wherein Locomotive Engineer L. F. O'Leary and Fireman J. B. Cowden, engaged in and connected with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown in the State of North Dakota to Mapleton in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 8.10 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911.

Second. That wherein Train Conductor F. J. Osborne and Brakemen E. M. Bumgardner and F. W. Shuey, engaged in and connected

with the movement of defendant's train extra 1667 drawn by N. P. engine 1667, said train being engaged in the movement of interstate traffic and running from Jamestown, in the State of North Dakota, to Mapleton, in said State, were, by defendant, required and permitted to be and remain on duty as aforesaid for a longer period than sixteen consecutive hours, to-wit, from the hour of 7.30 p. m. on October 29, 1911, to the hour of 1.15 p. m. on October 30, 1911. Plaintiff further alleges that by reason of said violation of said order of the Interstate Commerce Commission defendant is liable to the plaintiff in the sum of one hundred dollars.

Wherefore, plaintiff prays judgment against defendant in the sum of five hundred dollars and its costs herein expended.

EDWARD ENGERUD, *United States Attorney.*

Filed in the District Court on September 14, 1912.

Amended answer.

The defendant for its amended answer to the complaint of the plaintiff herein alleges as follows:

9 I.

It admits that it is now and during all the times mentioned in the complaint a common carrier engaged in interstate commerce by railroad in the State of North Dakota, all as alleged in each of the several causes of action herein.

II.

Defendant admits that it moved its train, extra 1667, drawn by N. P. engine 1667, between Jamestown and Mapleton, both in the State of North Dakota, on October 29th and October 30th, 1911, and that L. F. O'Leary was the locomotive engineer and J. D. Cowden was the fireman in charge of the engine drawing said train, and that F. J. Osborne was the train conductor and E. M. Bumgardner and F. W. Shuey were the brakemen in charge of said train; that defendant also admits that said train was engaged at said time and place in carrying interstate commerce.

III.

Defendant further alleges that the train crew, consisting of the conductor and brakemen above named, were called for duty for the movement of a wrecker train at 7.30 o'clock in the afternoon of October 29, 1911, but defendant further alleges that said train crew were released at such hour; that they had no duty to perform, as such crew and did not begin performing any such service for the defendant until 10.35 o'clock p. m. of the same date.

IV.

Further answering said complaint, and each of the causes of action therein stated, defendant alleges that the engine crew were called for the hour of 8.10 p. m. on October 29, 1911, to move a train eastward upon defendant's line of railroad; but that the train for which they were called was a wrecker train intended to be used in removing a wreck from the line of defendant's railway between Jamestown and Mapleton; but that at the said hour of 8.10 p. m. it was found that it was not necessary to send a wrecker train for the purpose aforesaid, and thereupon the said engine crew were notified they would not be required for service until the hour of 10.35 p. m. of the same day, at which last-named hour they would be required for duty in moving a commercial extra freight train east; and defendant alleges that the said engine crew did not perform any work or render any service to the defendant between the hours of 8.10 p. m. and 10.35 p. m. on said October 29, 1911, save that they kept alive the fire in the engine during said period.

10 V.

For a separate and further defense to said complaint and the several causes of action therein stated, defendant alleges that in the movement of said train from Jamestown to Mapleton, certain casualties and unavoidable accidents occurred and certain delays happened, which delays were the results of causes not known to the defendant or its officers or agents at the time the said crew left Jamestown, and which causes could not have been foreseen, to wit:

That at Brackett, a station intermediate between Jamestown and Mapleton, and which station was reached at or about 10.10 a. m. on October 30, 1911, certain boxes upon cars composing said train became heated, so that it became necessary for said train to be stopped until such trouble could be corrected; and that fifty minutes was consumed in repacking the boxes and getting the train in condition to be moved; also that between Wheatland and Casselton a similar trouble occurred in the boxes on the same cars, by reason of which fact an additional fifteen minutes was necessary, such time being used by the train crew in work upon such hot boxes; that the said train arrived at Mapleton at the hour of 1.15 p. m. on October 30, 1911, at which time both the engine crew and the train crew thereon were released from service, and defendant says that by reason of the facts hereinbefore set forth neither the train crew nor the engine crew were required or permitted to be or remain on duty as such employees for a longer period of service than that provided in the act of Congress in the complaint mentioned; and by reason of such fact it was not encumbent upon this defendant to make to the Interstate Commerce Commission the report in the complaint and the said several causes of action therein, set forth.

VI.

As a further defense herein to the complaint, and to each of the several causes of action therein set forth, defendant alleges that both the engine crew and the train crew referred to therein were called for service in manning and operating the so-called wrecker train which it was intended should travel east from Jamestown for the purpose of removing a wreck; but that before said train was actually made up or ready to depart, it was discovered by defendant that the same would not be required for the purpose of removing such wreck and thereupon the sending out of such wrecker train was abandoned, and the train crew and the engine crew were released as hereinbefore fully set forth; that said crews were thereafter called for duty in the operation of a commercial extra train moving east, and
11 which left the terminal, Jamestown, at 10.35 p. m.; that by reason of the facts hereinbefore set forth, and especially the abandonment of said wrecker train, for which said crews were originally called, the defendant did not understand that under the then existing regulations of the Interstate Commerce Commission a report was necessary or was required in respect of the work done and services rendered by said crews in the movement of said commercial freight train. Defendant further alleges that on or about November 29, 1912, defendant filed with the Interstate Commerce Commission a report in writing of all instances where its employees were employed more than the statutory period during the month of October, 1911; that said report was made under oath in the form and in accordance with the regulations of the Interstate Commerce Commission, and such report contained a large number of instances where employees of defendant for some reason or other, as in said report set forth, had been employed for more than the period allowed by the statute; that if the instances referred to in the several causes of action set forth in the complaint herein were not contained or set forth in the report thus filed by the defendant on November 29, 1912, the omission thereof was through inadvertence and by mistake, and was due to the fact that this defendant did not consider or understand that the instances referred to in the several causes of action set forth in the complaint herein were in fact violations of the statute, or that it was necessary or required that the same should be included in said report; and said defendant alleges that the said report thus submitted by it and filed with the Interstate Commerce Commission was intended to be full, true, correct, and complete in every particular, and to embrace any and all instances where employees of this company had been kept in its service for more than the statutory hours of service, and that any violations or omissions in such report were due to oversight, error, and mistake upon the part of this defendant and were not any intentional violations of the orders of the Interstate Commerce Commission in that behalf.

Wherefore defendant prays that it may be hence dismissed with its costs.

WATSON & YOUNG,
Attorneys for Defendant, Fargo, North Dakota.

STATE OF NORTH DAKOTA,
County of Cass, ss:

J. S. Watson, being first duly sworn, doth depose and say that he is one of the attorneys for the defendant in the above-entitled action; that he had read the above and foregoing
12 answer and knows the contents thereof; and that the same is true to his best knowledge, information, and belief.

J. S. WATSON.

Subscribed and sworn to before me this 3d day of May, 1913.

[SEAL.] GRACE L. MEADE,
Notary Public, Cass County, North Dakota.

My commission expires June 14, 1913.

Endorsed: Amended answer. Personal service of the within amended answer is hereby admitted this 5th day of May, 1913, at Fargo, N. D. Edward Engerud, attorney for plff. Filed May 5, 1913. J. A. Montgomery, clerk.

Judgment, June 4, 1913.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, DEFENDANT,

This case came on to be heard on motion for judgment on the pleadings, the plaintiff appearing by Edward Engerud, United States attorney, and the defendant by Watson & Young, its attorneys, and after hearing arguments of counsel and due consideration it is

Ordered that said motion be granted, to which order the defendant duly excepts.

Whereupon it is ordered that the plaintiff have judgment against the defendant as prayed for in its complaint.

Now it is ordered and adjudged that the plaintiff have and recover of the defendant, Northern Pacific Railway Company, the sum of five hundred dollars ($500.00) damages, together with the sum of $32.30, its costs and disbursements herein, and have execution therefor.

Petition for writ of error.

The defendant, Northern Pacific Railway Company, by its counsel, comes and says that in the record and proceedings in this cause there

is manifest error in this, to wit, in the particulars appearing in the assignment of errors hereto annexed as a part of this petition.

Wherefore for these and other errors appearing in the record defendant prays for the allowance and issuance of a writ of error herein from the United States Circuit Court of Appeals to the United States District Court for the District of North Dakota,
13 Southeastern Division, to the end that a transcript of the record, proceedings, and papers herein, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Dated July 10th, 1913.

WATSON & YOUNG,
Attorneys for Defendant.

Filed in the District Court on July 10, 1913.

Assignment of errors.

The court erred, for the following reasons, in granting plaintiff's motion for judgment and in rendering judgment against defendant upon the pleadings:

1. Because it appears and was conceded that the defendant made to and filed with the Interstate Commerce Commission upon November 20, 1912, a full report of all cases of over hours of service occurring upon its lines for the preceding month of October.

2. Because it appears and was conceded that in the instances mentioned in the complaint the trainmen were in no manner employed beyond the limit fixed by the statute set forth in the complaint, and such trainmen in fact were employed only from 10.35 o'clock p. m. October 29, 1912, until 1.15 o'clock p. m. of the following day.

3. Because it appears and was conceded that the engineer and fireman were in no manner employed beyond the limit fixed by the statute, and in fact only from 10.35 o'clock p. m. on October 29, 1912, until 1.15 o'clock p. m. the fol'owing day, their service in keeping up fires in said engine from 7.30 p. m. to 10.35 p. m. on October 29th not constituting a service within the meaning of the act of Congress set forth in the complaint.

4. Because it appears and was conceded that if the instances mentioned in the complaint were not in fact set out in defendant's report filed November 29, 1912, with the Interstate Commerce Commission, the omission thereof from such report occurred by accident and mistake, was unintentional upon defendant's part, and the report as actually filed was intended to be full, true, correct, and complete in every particular and was intended to embrace all instances of over-service for the period covered thereby.

5. Because it appears and was conceded that any omissions in such report covering hours of over-service during the month of
14 October, 1912, were due to oversight, error, and mistake and were not intentional violations of the commissioner's rule.

6. Because upon all the facts stated in defendant's amended answer, and admitted by plaintiff, no liability arose, and the court erred in adjudging that defendant was guilty of violating the statutes set forth in the complaint.

WATSON & YOUNG,
Attorneys for Defendant, Northern Pacific Railway Company.

Filed in the District Court on July 10, 1913.

Supersedeas bond.

Know all men by these presents, That we, Northern Pacific Railway Company, a corporation, as principal, and National Surety Company of New York, as surety, are held and firmly bound unto the United States of America in the full and just sum of one thousand dollars ($1,000.00) to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators jointly and severally by these presents.

Sealed with our seals and dated this 10th day of July, A. D. 1913.

Whereas, lately, at the May, 1913, term of the United States District Court for the District of North Dakota, Southeastern Division, in a [suot] pending in said court between the above-named parties judgment was rendered against the Northern Pacific Railway Company, and the said Northern Pacific Railway Company has obtained a writ of error of the said court to reverse said judgment, and a citation directed to the said United States of America, citing and admonishing them to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Paul, Minnesota, sixty days from and after the date of said citation.

Now, therefore, the consideration of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make good its appeal, then the above obligation to be void, else to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY,
By WATSON & YOUNG, *Its Attorneys.*
[SEAL.]
NATIONAL SURETY COMPANY,
By R. C. MOORE, *Resident Asst. Sec.*

15 STATE OF NORTH DAKOTA,
County of Cass, ss.

On this 10th day of July, 1913, before me appeared R. C. Moore, to me personally known, who being by me duly sworn, did say that he is resident asst. secy. of the National Surety Company, of New York, a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by author-

ity of its board of directors, and said R. C. Moore acknowledged said instrument to be the free act and deed of said corporation.

[SEAL.] J. S. WATSON,
Notary Public.

My commission expires Nov. 21, 1916.
Filed in the District Court on July 10, 1913.

Writ of error.

UNITED STATES OF AMERICA—*ss.*

The President of the United States of America to the honorable judge of the District Court of the United States for the District of North Dakota, Southeastern Division, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in said District Court before you, at the May, 1913, term thereof, between the United States of America, plaintiff, and the Northern Pacific Railway Company,. defendant, a manifest error hath happened, to the great damage of the said Northern Pacific Railway Company, as is set forth, and as by its complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Eighth Circuit, together with this writ, so that you have said record and procedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit on or before the 8th day of September, 1913, to the end that the records and procedings aforesaid being inspected, the United States Circuit Court of Appeals
16 may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness, the Hon. Edward D. White, Chief Justice of the Supreme Court of the United States, this 10″ day of July, 1913.

[Seal U. S. District Court Dist. of North Dakota.]

Issued at office in Fargo, North Dakota, with seal of the United States District Court for the District of North Dakota, and dated as aforesaid.

J. A. MONTGOMERY,
Clerk United States District Court for the District of North Dakota.

The foregoing writ of error is hereby allowed.

CHARLES F. AMIDON,
United States District Judge for the District of North Dakota.

UNITED STATES OF AMERICA,
District of North Dakota—ss.

In obedience to the command of the within writ I herewith transmit to the United States Circuit Court of Appeals a duly certified transcript of the record and proceedings in the within-entitled case and all things concerning the same.

In witness whereof I hereto subscribe my name and affix the seal of the District Court of the United States for the District of North Dakota this 18″ day of July, A. D. 1913.

[Seal U. S. District Court Dist. of North Dakota.]

J. A. MONTGOMERY,
Clerk United States District Court.

Citation.

United States of America to United States of America, greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States District Court for the District of North Dakota, Southeastern Division, wherein Northern Pacific Railway Company is plaintiff in error and you are defendant in error,
17 to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the honorable Charles F. Amidon, judge of the District Court of the United States for the District of North Dakota, this 10th day of July, A. D. 1913.

CHARLES F. AMIDON, *Judge.*

Personal service of the above citation, by copy thereof, is hereby admitted at Fargo, North Dakota, this 14th day of July, A. D. 1913.

EDWARD ENGERUD,
Attorney for Defendant in Error.

Clerk's certificate to transcript.

UNITED STATES OF AMERICA,
District of North Dakota—ss.

I, J. A. Montgomery, clerk of the United States District Court for the District of North Dakota, do hereby certify that the foregoing pages, from 1 to 27, contain true and faithful transcripts of all those portions of the pleadings, process, and proceedings of record and on file in my office as said clerk, designated by the parties thereto, and the whole thereof, and the indorsements thereon, in the case of

"United States of America, plaintiff, versus Northern Pacific Railway Company, defendant."

[Seal U. S. District Court Dist. of North Dakota.]

Witness my hand and the seal of said United States District Court, at Fargo, in said district, this 18th day of July, A. D. 1913.

J. A. MONTGOMERY, *Clerk.*

Filed Aug. 2, 1913. John D. Jordan, clerk.

18 Appearance of Messrs. Watson & Young, as counsel for plaintiff in error.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America. The clerk will enter my appearance as counsel for the plaintiff in error.

J. S. WATSON,
N. C. YOUNG,
Fargo, N. Dak.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Aug. 2, 1913.

Appearance of Mr. Edward Engerud and Mr. M. A. Hildreth, as counsel for defendant in error.

The clerk will enter my appearance as counsel for the defendant in error.

EDWARD ENGERUD,
U. S. Attorney,
M. A. HILDRETH,
Asst. U. S. Atty., for Deft. in Error.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Sept. 11, 1913.

Appearance of Mr. Emerson Hadley as counsel for plaintiff in error.

The clerk will enter my appearance as counsel for the plaintiff in error.

EMERSON HADLEY.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Dec. 15, 1913.

19 Appearance of Mr. Philip J. Doherty, as counsel for defendant in error.

The clerk will enter my appearance as counsel for the defendant in error.

PHILIP J. DOHERTY,
Special Asst. U. S. Attorney.

(Endorsed:) Filed in U. S. Circuit Court of Appeals on Dec. 16, 1913.

Order of submission.

December term, 1913. Tuesday, December 16, 1913.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Emerson Hadley for plaintiff in error and concluded by Mr. Philip J. Doherty for defendant in error.

Thereupon this cause was submitted to the court on the transcript of record from said district court and the briefs of counsel filed herein.

20 *Opinion.*

United States Circuit Court of Appeals, Eighth Circuit.

No. 4015.—December term, A. D. 1913.

NORTHERN PACIFIC RAILWAY COMPANY, plaintiff in error,
vs.
UNITED STATES OF AMERICA, defendant in error.

In error to the District Court of the United States for the District of North Dakota.

Mr. Emerson Hadley (Mr. C. W. Bunn and Messrs. Watson & Young were with him on the brief), for plaintiff in error.

Mr. Philip J. Doherty, special assistant U. S. Attorney (Mr. Edward Engerud, U. S. Attorney, was with him on the brief), for defendant in error.

Before Sanborn and Hook, circuit judges, and Pope, district judge.

Syllabus.

1. Crimes—Hours of service—Report of excessive service—Omission or mistake in.

An omission by a common carrier from a periodical report of the instances of excessive service of its employees made and filed in
21 good faith within the time prescribed therefor by the Interstate Commerce Commission pursuant to the amendment of section 20 of the act to regulate commerce, 36 Stat., 556, of one or more instances that should have been included therein, or any mistake of law or fact made therein in good faith, does not subject the common carrier to liability for the penalties or forfeitures denounced by that amendment for a failure to file the periodical report.

2. Statutes—Construction—Natural meaning preferred to hidden signification.

The apparent and natural meaning of the terms of a statute is to be preferred to any curious recondite signification deduced by study, ingenuity, and strong desire.

3. Same—Reasonable interpretation preferred to unjust and oppressive one.

A reasonable sensible interpretation of a statute should be preferred to an irrational signification that renders the law unjust and oppressive.

4. Same—Penal statute creating new offense—Persons and acts denounced.

A penal statute which creates a new offense and prescribes the punishment for it must clearly state the persons and acts denounced.

An act or omission which is not clearly an offense by the expressed will of the legislative body before it is committed may not be made so after its commission by the introduction into the law of declarations, or by the expunging therefrom of words or terms by the judiciary.

Sanborn, circuit judge, delivered the opinion of the court.

The railway company complains of a judgment of $500.00
22 against it for five fines of $100.00 each for failing for five successive days to correct an unintentional omission of an instance of excessive service of some of its employees from its monthly report of such instances filed with the Interstate Commerce Commission on November 29, 1912.

The Interstate Commerce Commission under the authority of the amendment of section 20 of the act to regulate commerce of February 4, 1887, chap. 104, 24 Stat., 386, made June 18, 1910, and found in chap. 309, sec. 14, 36 Stat., 556 (U. S. Comp. Stat., supp., 1911, page 1305), made an order on June 28, 1911, that all carriers subject to the provisions of "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," commonly called the hours-of-service act, 34 Stat., 1415, should "report within thirty days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in such act," and it was for an innocent omission of one instance from one of these monthly reports that this action was brought. Section 20 of the act of 1887, as amended by the act of June 29, 1906, 34 Stat., chap. 3591, sec. 7, pages 584, 593, authorized the commission to require annual reports from each common carrier subject to the act of its capital stock issued, the amounts paid therefor, the manner of payment therefor, its dividends paid, its surplus fund, the number of its stockholders, its funded and floating debt, the cost and value of its property, franchises, and equipment, the number of its employees and the salaries paid each class, its accidents, earnings, receipts, expenditures, etc., and it empowered the commission to require from each carrier specific answers to all questions upon which the commis-

sion might need information. A subsequent portion of this section 20, as amended in 1910, 36 Stat., 556, read in this way:

"If any carrier, person, or corporation subject to the provisions of this act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such
23 party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided."

This quotation contains the only definition of the offense and the only specification of the penalties involved in this case. The offense is the failure "to make and file any such periodical * * * report within the time fixed by the commission," and the penalties are "the forfeitures last above provided." The forfeitures last above provided are prescribed for the failure of the carrier to file in due time its annual report which is required to set forth the vast mass of statistics and information required by the first portion of section 20, and for its failure to answer any specific question propounded by the commission within the time lawfully prescribed for the answer, and these penalties are the forfeiture of $100.00 for each and every day the carrier shall continue to be in default with respect to the annual report or the answers to the questions. The judgment in this case was rendered upon the pleadings and the material facts which they disclose are these: On October 29, 1911, an engineer, fireman, conductor, and two brakemen were called at 7.30 p. m. to take out a wrecker train at 8.10 p. m. from Jamestown, North Dakota, but it subsequently proved unnecessary to send that train out, and at 8.10 p. m. these employees were released from duty and notified that they would not be required for service until 10.35 p. m., and they rendered no service prior to that, except that the engineer and fireman kept the fire in their engine alive. At 10.35 p. m. they took a train east from Jamestown to Mapleton, where they arrived and where their service ceased at 1.15 p. m. October 30, 1911, so that unless they were in service between 8.10 p. m. and 10.35
24 p. m. October 29, 1911, their service was only fourteen hours and forty minutes and they rendered no excess service. If,

on the other hand, they were on duty between 8.10 p. m. and 10.35 p. m. October 29, their continuous service exceeded the sixteen hours limited by the hours-of-service act. It was conceded at the hearing in this court that the United States had sued the company, had recovered, and the company had paid the penalty prescribed by the hours-of-service act for this excessive service, and that by that judgment the fact that these employees were on duty from 8.10 p. m. October 29 until 1.15 p. m. October 30 was rendered res adjudicata. On November 29, 1911, the railway company filed its monthly report, under oath, of the instances of hours of service of its employees on duty during October for longer periods than those named in the hours-of-service act in the form and in accordance with the regulations of the Interstate Commerce Commission, and many such instances were disclosed therein. By reason of the abandonment of the wrecker train the company did not consider or underestand when it made and filed this report that it was required to report the instance which has been described, and its report was intended in good faith to be true and complete and to embrace any and all instances where its employees were kept in service longer during the month of October than the times limited by the act of Congress, but it did not specify the instance of excessive service on which this suit is founded. The result is that the case in brief is this:

The commision lawfully required the company to file within thirty days after the end of each month a monthly or periodical report of all instances of hours of service of its employees on duty for a longer period than that named in the hours-of-service act. The 20th section of the act to regulate commerce as amended fixed a penalty of $100.00 for each and every successive day of failure of the company to file such a periodical report. The company filed in good faith such a periodical report, under oath, within the time fixed, but unintentionally and by mistake omitted one instance of excessive service from its report which it should have included. Is such an omission a failure to file the periodical report which renders the company liable to the penalty of $100.00 for each successive day after the expiration of the thirty days within which the report is
25 required to be filed? The court below answered this question in the affirmative and in support of that conclusion counsel for the Government contend that the mistake of the company here was a mistake of law and not of fact, and for the purposes of this discussion and decision this contention may be admitted to be sound. They argue that the order of the commission required a monthly report of all instances of excessive service, that the filing of the report of all instances but one was a failure to file a report of all instances and therefore a failure to file the periodical report which created a liability to the penalties prescribed by the act. But it is not true that a carrier that in good faith files an incorrect or incomplete periodical report, under oath, in due time has failed to file any such periodical report. If it were such a carrier would be liable

to penalties for each of the instances of excessive service specified in such a filed report as much as for those omitted and such a result is too intolerable and oppressive to be seriously contemplated. Counsel cite and review the cases that treat of the constitutionality of the hours-of-service act, of its worthy purpose, of the authority of the commission to require the report, and of the duty of the courts to enforce the law (Baltimore & Ohio R. R. Co. v. Interstate Commerce Comm., 221 U. S., 612, 621; United States v. Yazoo & M. V. R. Co., 203 Fed., 159 (D. C.); United States v. Chicago, Milwaukee & Puget Sound Ry. Co., 195 Fed., 783), but they present no direct authority that the filing in good faith of an incomplete or incorrect report, affidavit, complaint, answer, or other such article required by law is a failure to file any such article which subjects the delinquent to a penalty denounced for such a failure. And there are many reasons why that proposition fails to commend itself to our judgment.

A reasonable, sensible meaning should be attributed to a statute in preference to one which is irrational and improbable. Madden v. Lancaster Co., 65 Fed. 188, 195, 12 C. C. A. 566, 573; Omaha Water Co. v. City of Omaha, 147 Fed. 1, 13, 77 C. C. A. 267, 279; Armour Packing Co. v. United States, 153 Fed. 1, 18, 21, 82 C. C. A. 135, 152, 155; Lafayette Co. v. Wenderly, 92 Fed. 313, 316, 34 C. C. A. 360, 363; Webber v. St. Paul City Ry. Co., 97 Fed. 140, 143, 38 C. C. A. 79, 82. The penalties denounced by section 20 of the act to regulate commerce as amended by the act of June 18, 1910,
26 36 Stat. 556, for the failure to file this monthly report are the same as those prescribed by the same section for the failure of a carrier to file its annual report. They are $100 for each and every day the carrier shall continue to be in default with respect thereto. The annual report requires such a vast amount of information, so many statistics and details that it is improbable, if not impossible, that any carrier could ever make such a report without some unintentional omission of information required and some mistakes in the information given. If the failure to file an annual report without such an omission and without any mistake or misinformation therein is such a failure to file an annual report as makes the carrier liable for the penalties it must be difficult, if not impossible, for any carrier to escape them, and it is incredible that the Congress intended to subject carriers to the forfeitures prescribed for the failure to file these annual reports on account of such inadvertent omissions or mistakes in them. If the Congress did not so intend in the case of the annual report it probably did not have that intention in the case of the monthly report, for the same penalties are prescribed in the same section for the failure to file each.

The penalties are $100.00 for each and every day the default in filing the report continues. If these penalties are incurred for failure to file the report, as the statute reads, the act of Congress is neither unreasonable nor excessively drastic, for the carrier knows

or may readily ascertain whether or not it has filed its report in due time and hence it is easy for it to prevent any continuing default. But if these penalties are incurred by its innocent omission from or mistake in the specifications of excessive service in the report filed by the carrier the statute becomes irrational and unduly oppressive, for the carrier is not aware and will not have notice of such unintentional omissions and mistakes when it makes its report, and yet for each omission or mistake it may incur a penalty of $100.00 every day for at least three hundred and sixty days, or $36,000.00, and thus an honest error of law or mistake of fact in making the report may easily entail a penalty of $36,000.00, while a wilful delay to file the report immediately and under oath would be limited to $100.00 or $200.00. Indeed, if the construction claimed by counsel for the Government is the true interpretation of this act the United States could recover of the defendant for its
27 omission in this case $100.00 for each day between November 30, 1911, and September 14, 1912, when the complaint in this case was filed, or $28,900.00. Such an interpretation of this act of Congress renders it so unjust and oppressive that we can not think that Congress intended that it should receive such a construction.

Again, this amendment of June 18, 1910, 36 Stat., 556, created and penalized a new offense, the failure of a carrier to file its monthly or periodical report of instances of the excessive service of its employees within the time fixed by the commission. A statute which creates a new offense and prescribes its punishment must state clearly the persons and acts denounced. An act which was not an offense by the expressed will of the legislative body before it was done may not be justly or lawfully made so by construction after it is committed, either by the introduction into the statute of declarations or the expunging therefrom of words or terms by the judiciary. Congress might have modified this clause which describes and limits the offense, to wit: "If any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission it shall be subject to the forfeitures last above provided," so that it would have read: "And if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, or shall omit to specify in any such report it files any instance of excessive service required to be reported therein, it shall be subject to the forfeitures last above provided." But it did not do so, the legal presumption is that it did not intend to do so, and it is not the province of the judiciary thus to amend the statute and by such amendment to create and punish another class of offenses. Nothing comes to mind more appropriate to the determination of the question here at issue than the familiar words of Chief Justice Marshall: "Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one, indeed, which would justify a court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the

words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so. It would be dangerous, indeed, to carry the principle that a case which is within the reason or mischief of a statute is
28 within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity or of kindred character with those which are enumerated." United States v. Wiltberger, 18 U. S. 76, 95; United States v. Ninety-nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First National Bank of Anamoose v. United States, 206 Fed. 374, 376, . . . C. C. A. . . . .

The natural apparent meaning of the terms of a statute should always be preferred to any recondite signification discovered only by study, ingenuity, and strong desire. United States v. Ninety-Nine Diamonds, 139 Fed. 961, 964, 72 C. C. A. 9, 12; First Nat. Bank of Anamoose v. United States, 206 Fed. 374, 376, 124 C. C. A. 256. The natural apparent meaning of this statute is that Congress relied, and intended to rely, upon the oath to the periodical report and the penalty for perjury in wilfully falsely making it, as security for the completeness and truth of the report, and upon the penalty for the failure to file it as security for its filing alone. The terms of the statute are plain and they fail to declare the innocent omission of an instance of excessive service from or the mistake in a report an offense punishable by the fines it specifies. Reason and authority alike teach that the act of omitting from a periodical report filed in good faith an instance or item which should have been included therein, or a mistake in the information which the report contains is not the offense of failing to file any such periodical report. United States v. Four Hundred Twenty Dollars, 162 Fed. 803, 804; Bonnell v. Griswold, 80 N. Y. 128, 132, 133; Pier v. Hanmore, 86 N. Y. 95, 100; Matthews v. Patterson, 26 Pac. 812, 813; Whitney Arms Co. v. Barlow, 63 N. Y. 62.

And the conclusion is that an omission by a carrier from the periodical report of the instances of excessive service of its employees made and filed in good faith within the time prescribed therefor by the Interstate Commerce Commission under the amendment of section 20 of the act to regulate commerce, 36 Stat. 556, of one or more instances that should have been included therein, or any mistake of law or fact therein made in good faith, does not subject the carrier to liability for the penalties or forfeitures denounced by that amend-
ment for the failure to file a periodical report. The judgment
29 below must, therefore, be reversed and the case must be remanded to the court below for further proceedings not inconsistent with the views expressed in this opinion, and

It is so ordered.

Filed March, 21, 1914.

30 *Judgment.*

United States Circuit Court of Appeals, Eighth Circuit.

December term, 1913. Saturday, March 21, 1914.

NORTHERN PACIFIC RAILWAY COMPANY, plaintiff in error,
No. 4015. *vs.*
UNITED STATES OF AMERICA.

In error to the District Court of the United States for the District of North Dakota.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of North Dakota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby reversed without cost to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions for further proceedings not inconsistent with the views expressed in the opinion of this court.

March 21, 1914.

31 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the District of North Dakota, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein the Northern Pacific Railway Company is plaintiff in error and the United States of America is defendant in error, No. 4015, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that on the first day of June, A. D. 1914, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the District of North Dakota.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this twenty-fourth day of July, A. D. 1914.

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

32 In the Supreme Court of the United States.

October term, 1914.

THE UNITED STATES, PETITIONER,
v.
NORTHERN PACIFIC RAILWAY COMPANY. } No. 624.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the record now on file in the Supreme Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit to the writ of certiorari granted herein.

JNO. W. DAVIS,
Solicitor General.
C. W. BUNN,
EMERSON HADLEY,
WATSON & YOUNG,
Counsel for Respondent.

OCTOBER 28, 1914.

(Endorsed:) No. 4015. Northern Pacific Railway Company, plaintiff in error, vs. United States of America. Stipulation as to return to writ of certiorari from Supreme Court, U. S. Filed Nov. 4, 1914. John D. Jordan, clerk.

33 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the honorable the judges of the United States Circuit Court of Appeals for the Eighth Circuit, greeting:

Being informed that there is now pending before you a suit in which Northern Pacific Railway Company is plaintiff in error and the United States of America is defendont in error, No. 4015, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the District of North Dakota, and we, being willing for certain reasons that the said cause and the record and proceedings therein should

be certified by the said Circuit Court of Appeals and removed
34 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Edward D. White, Chief Justice of the United States, the twenty-seventh day of October, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

35 *Return to writ.*

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Northern Pacific Railway Company, plaintiff in error, vs. United States of America, No. 4015, is a full, true, and complete transcript of all the pleadings, proceedings, and record entries in said cause as mentioned in the certificates thereto.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this seventh day of November, A. D. 1914.

[SEAL.] JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Indorsed:) File No. 24368. Supreme Court of the United States, No. 624. October term, 1914. The United States vs. Northern Pacific Railway Co. Writ of certiorari. Filed Nov. 4, 1914. John D. Jordan, clerk.

(Indorsed:) File No. 24368. Supreme Court U. S. October term, 1914. Term No. 624. The United States, petitioner, vs. Northern Pacific Railway Co. Writ of certiorari and return. Filed November 12, 1914.

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